

BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD 1991 NOV 26 AM 9:35

PUBLIC EMPLOYMENT  
RELATIONS BOARD

CITY OF DES MOINES	)	
Public Employer/Petitioner	)	
and	)	CASE NO. 4541
MUNICIPAL EMPLOYEES ASSOCIATION	)	
Certified Employee	)	
Organization	)	

## PROPOSED DECISION AND ORDER

Statement of the Case

James A. McClimon, Administrative Law Judge. This case concerns an amendment of bargaining unit petition filed by the City of Des Moines (City) pursuant to Public Employment Relations Board (Board) Rule 4.6. The City's petition seeks to exclude five job classifications from an existing bargaining unit represented by the Municipal Employees Association (Association). The job classifications at issue are senior zoning inspector, senior building inspector, senior plumbing inspector, senior mechanical inspector, and senior electrical inspector. The City's petition affects five employees.

The City and Association agreed, on October 10, 1991, to the following:

(1) The parties waive an evidentiary hearing, oral arguments and briefs; (2) The parties agree that the Board decision as to whether the affected job classifications are supervisory positions will be based on the employee job classifications' written job descriptions; (3) The Association does not contest the actual job functions and duties contained in the affected employees' written job descriptions.

Based on the above stipulations, I make the following:

## FINDINGS OF FACT

### I. Senior Building Inspector

The senior building inspector job classification is defined as follows:

Under direction, to supervise and participate in the inspection of building construction and alterations for compliance with codes, ordinances, and laws; and to do related work as required.

Examples of actual job duties contained in the classification's written job description includes: reviews and examines architectural and structural plans for approval and issuance of building permits; inspects buildings for compliance with codes, ordinances, and laws; "supervises and gives technical guidance to subordinate inspectors and handles the most difficult problems"; investigates new products and methods of construction and recommends new or revised regulations; maintains inspection files; and investigates complaints.

### II. Senior Electrical Inspector

The senior electrical inspector job classification is defined as follows:

Under direction, to supervise and participate in the inspection of electrical installations and repair work for compliance with codes, ordinances and laws; and to do related work as required.

Examples of actual job duties contained in the classification's written job description includes: reviews plans and wiring diagrams and inspects fixtures, appliances and

equipment; enforces electrical code; "supervises and gives technical guidance to subordinates"; and "participates in meetings and conferences on electrical and building inspection problems".

### III. Senior Zoning Inspector

The senior zoning inspector job classification is defined as follows:

Under direction, to supervise and assist a staff of field inspectors in the enforcement of the City's zoning and sign regulations; and to do related work as required.

Examples of actual job duties contained in the classification's written job description includes: "Exercises general supervision and provides technical guidance for other inspectors involved in enforcement of zoning and sign regulations"; makes decisions on technical problems; interprets established policies and assists in developing policy guidelines; reviews plans and permit applications for buildings, structures and signs; and "acts for supervisor when so directed".

### IV. Senior Mechanical Inspector

The senior mechanical inspector job classification is defined as follows:

Under direction, to supervise and participate in the inspection of mechanical equipment for compliance with code requirements; and to do related work as required.

Examples of actual job duties contained in the classification's written job description includes: reviews plans for installation of power plants, heating, refrigeration and air conditioning equipment; makes on-site inspections; gives technical

advise to contractors; "supervises and checks the work of subordinate inspectors and handles the most difficult problems"; and "maintains work records and prepares reports".

V. Senior Plumbing Inspector

The senior plumbing inspector job classification is defined as follows:

Under direction, to supervise and participate in the inspection of plumbing installation and services for compliance with applicable codes, ordinances, and laws; and to do related work as required.

Examples of actual job duties contained in the classification's written job description includes: reviews plans and inspects plumbing installation and repair work; investigates complaints and enforces plumbing code requirements; "Supervises and gives technical guidance to subordinates"; evaluates new materials and procedures; prepares examination for plumbing contractor's licenses; and "Participates in meetings and conferences on plumbing inspection problems".

CONCLUSIONS OF LAW

The issue in this case is the supervisory status of five job classifications currently included in a bargaining unit represented by the Municipal Employees Association.

Section 4.2 of the Public Employment Relations Act defines a supervisory employee as an individual:

having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees or the responsibility to direct them, or to adjust their grievances, or effectively to recommend

such action, if, in connection with the foregoing, exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In determining whether a job classification is supervisory under the Act, the Board held in Dubuque Community School District, 75 PERB 28:

"...it is clear that specific job titles will not be controlling in such a determination and that the relevant point of inquiry is actual job responsibilities, powers and duties. This is a question of fact to be determined in every case..." (emphasis added)

Moreover, the Iowa Supreme Court has also concluded that the Act requires evidence of actual supervisory authority visibly translated into tangible examples, and that the question of whether an employee is a true supervisor is a fact question to be determined on a case-by-case basis, in which the Board must give practical application of Section 4.2 to the "...infinite and complex gradations of authority which may exist in employment." City of Davenport v. PERB, 264 N.W.2d 307, 313 (Iowa 1978). In this case the City and Association agree that the supervisory status of the five job classifications at issue are to be made based on the actual job functions and duties contained in the affected employees' written job descriptions.

Based upon the actual job functions and duties contained in the written job descriptions presented in this case, the five job classifications at issue do not possess either the requisite supervisory authority found in Section 4.2 of the Act or the authority to recommend such supervisory action. Rather, the job

descriptions clearly demonstrate that City employees assigned to these job classifications have as their primary job duty the responsibility to enforce the City's building, electrical, zoning, mechanical, and plumbing codes and ordinances.

Certain job descriptions at issue indicate a "supervisory" relationship between senior and subordinate employees. These job descriptions, however, do not contain specific examples of the senior employees' supervisory relationship over subordinates regarding personnel matters. In City of Davenport, cited above, the Iowa Supreme Court concluded that statutory supervisory power:

...must exist in reality, not only on paper. However, it is the existence of the power and not its exercise which is determinative. What the statute requires is evidence of actual supervisory authority "visibly translated into tangible examples"... (emphasis added). (City of Davenport, at 314).

The City of Des Moines and the Municipal Employees Association waived an evidentiary hearing in this case and, therefore, no evidence is present regarding the job classifications' authority to either perform, without prior approval, the specific functions contained in Section 4.2, or the power to effectively recommend such action. Absent examples of actual supervisory authority, it is reasonable to conclude that such authority does not exist, except for the overall direction which senior inspectors possess over less senior employees relative to technical guidance and advice. To conclude otherwise would ignore Iowa Supreme Court and Board caselaw which requires that a true supervisor's authority exists in reality and not only on paper. Actual examples of

supervisory authority, which is the primary consideration when applying the statutory definition of a supervisor to the facts in each employment situation, are not present in this case. This conclusion however does not preclude the parties, in the future, from presenting in an evidentiary hearing tangible examples of the job classifications' statutory supervisory authority, if such authority exists.


Finally, in City of Mason City, 86 PERB 3040, the Board concluded that the Board cannot imply statutory supervisory authority based solely upon an employee's job title. In this case, the fact that the job classifications at issue are designated "senior" positions does not, by itself, make those employees true supervisors under the Act.

Based upon the foregoing Findings of Fact and Conclusions of Law, I issue the following:

ORDER

IT IS HEREBY ORDERED that the petition for amendment of bargaining unit is, dismissed.

DATED at Des Moines, Iowa this 26th day of November, 1991.

  
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JAMES A. MCCLIMON  
ADMINISTRATIVE LAW JUDGE